

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EA-07 ISO-00 EB-07 L-03 /018 R

SPECIAL CHARGE: TX-387

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P 210301Z SEP 76

FM SECSTATE WASHDC

INFO AMEMBASSY MANILA PRIORITY 9892

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EO 11652: NA

TAGS: EFIN

SUBJECT: DRAFT TAX CONVENTION

REF: MANILA 14371

1. INTENT OF PROPOSED CHANGE IS TO AVOID PRECEDENT OF A TREATY POLICY ON AIRLINE PROFITS OTHER THAN RECIPROCAL EXEMPTION, WHICH AIRLINES FEEL WOULD JEOPARDIZE THEIR POSITION IN MANY COUNTRIES IF AGREED TO.

2. OPTION A WOULD NOT HAVE ANY EFFECT ON POSSIBLE IMPOSITION OF RETAILATORY TAXES BY U.S. POSSIBILITY OF RETALIATORY TAXES DOES EXIST IN U.S. LAW AS GOP DELEGATION UNDERSTANDS. IT EXISTS UNDER MARCH DRAFT AND WOULD REMAIN EVEN IF THE TREATY SAID THAT DOMESTIC LAW PREVAILS. PROPOSED LANGUAGE WAS CAREFULLY DRAFTED AND CLEARED BY RELEVANT OFFICES AT STATE, TREASURY, AND WITH AIR TRANSPORT ASSOCIATION, AND WE HOPE GOP CAN ACCEPT IT.

3. OPTION B DOESN'T WORK BECAUSE, SINCE PHILIPPINE TAX IS DISCRIMINATORY AIRLINES MUST EITHER BE EXCLUDED FROM LIMITED OFFICIAL USE

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THE CONVENTION OR EXCLUDED FROM THE NONDISCRIMINATION

ARTICLE. WE FIND A PROVISION SPECIFICALLY AUTHORIZING DISCRIMINATION AGAINST AIRLINES MORE OBJECTIONABLE THAN EXCLUDING AIR TRANSPORT PROFITS FROM THE CONVENTION AS PRESENT PROPOSAL DOES.

4. IF GOP SIMPLY CANNOT ACCEPT PROPOSED PARA 2 WE COULD SUBSTITUTE:

"(2) NOTHING IN THIS CONVENTION SHALL AFFECT THE RIGHT OF A CONTRACTING STATE TO TAX PROFITS DERIVED BY A RESIDENT OF THE OTHER CONTRACTING STATE FROM SOURCES WITHIN THE FIRST-MENTIONED CONTRACTING STATE FROM THE OPERATION OF AIRCRAFT IN INTERNATIONAL TRAFFIC."

HOWEVER WE MUCH PREFER EARLIER PROPOSAL.

5. WE ARE MOVING AHEAD WITH AUTHORIZATION FOR SIGNATURE. AS SOON AS WE HAVE GOP AGREEMENT TO ARTICLE 9, WE WILL COMPLETE PREPARATION OF U.S. AND GOP COPIES OF TREATY. THESE COPIES WILL BE HANDCARRIED TO MANILA. ROBINSON

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TAX LAW, AGREEMENT DRAFT
Control Number: n/a
Copy: SINGLE
Draft Date: 21 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ElyME
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE233517
Document Source: CORE
Document Unique ID: 00
Drafter: TREAS:OS:MFIELD//EB/IFD/OMA:TAFORBORD
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760355-1152
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760936/aaaabevu.tel
Line Count: 81
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 MANILA 14371
Review Action: RELEASED, APPROVED
Review Authority: ElyME
Review Comment: n/a
Review Content Flags:
Review Date: 04 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <04 JUN 2004 by CunninFX>; APPROVED <29 SEP 2004 by ElyME>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: DRAFT TAX CONVENTION
TAGS: EFIN, RP, US
To: MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006